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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,551	06/28/2002	Satoshi Mekata	AKY-0002	3224
23353	7590	11/23/2005	EXAMINER	
RADER FISHMAN & GRAUER PLLC LION BUILDING 1233 20TH STREET N.W., SUITE 501 WASHINGTON, DC 20036			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,551

Applicant(s)

MEKATA ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All. b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burke-5620678 in view of Dohara et al 5055299 and Boe 2524590.

Burke provides the instant initial single phase concentrate/propellant, which separates upon spraying (col. 2, top & line 50-65). DME, water & isoparaffinic hydrocarbons are present (top col. 2, line 35-40); but not polyols, rather Isopropanol is utilized. See claim 1 for concentrations, & examples- water is exemplified @33-43 %, but example VI requires no water; thus 0-65% is disclosed.

Dohara also provides single phase (col. 2, lines 9-16---homogeneous) aerosols, with buffer, therefore water @ 10-55% (col. 2, lines 29-44) of total composition. Although no isopar is mentioned, co solvent equivalents, of isopropanol are; PROPYLENE GLYCOL & GLYCOL ETHERS (COL. 1, LINE 67-LINE 6, COL. 2).

Neither reference focuses on the instant flammability. However, Boe does (col. 7, lines 12-18) with enhanced safety, as water would provide for the instant flash point criteria. Boe shows examples of water @ 15%(col. 9, lines 38-44).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize an aerosol insecticide control means, to use any of art recognized means, as of Burke, Dohara. Motivation to use specific oil carrier & actives is shown by Burke, while Dohara shows equivalence of alcohol & glycol cosolvents. Solvents, adjuvants and exact ratios and amounts thereof are within the

purview of one in the art to attain, in order to optimize desired effects, such as control of specific insects, composition compatability, stability, while Boe teaches addition of water eliminates flammability.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pest of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects, with consideration of pesticide ingredient compatibility.

There is no non obvious and/or unexpected results obtained since the prior art is well aware of the use of insecticides for control of insects and the use of additives for the functionality for which they are known to be used is not a basis for patentability. The selection of active is a result effective parameter determinable by artisan as desired for purposes of treating specific pests.

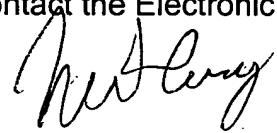
Applicant's arguments filed 8/19/05 have been fully considered but they are not persuasive. Applicant's arguments are persuasive as to the language of "single phase propellant/concentrate" as of patentable weight even though not reiterated in the body of the claim, & rejections contrary to this concept are withdrawn. However, the pictures are unclear as seen in the E-Dan screens & when printed out. All I see are (fig 2) upper layers of white over clear, when mixed all white, thus homogeneous-single phase. All of

Fig 1 are clear, no layers discernable to me. Actual Photographs would be appropriate to present. Even if the argued for differences were identifiable, the claims are beyond the scope of the broad categorical language as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NEIL LEVY
Primary Examiner
Art Unit 1615